IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23810 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HARIJAN MAFABHAI SADABHAI & 3 - Petitioner(s)

Versus

STASTE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR AMIT C NANAVATI for Petitioner(s) : 1 - 4.
Mr S P Hasurkar, asstt.GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 16/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

Rule. Mr S P Hasurkar, learned AGP waives service of notice of rule on behalf of respondent no.1.

It is the grievance of the petitioners that their applications under section 28A of the Land Acquisition Act (for short, 'the Act') has been dismissed solely on the ground that the certified copy of the award has not been annexed to the application. The impugned order is dated 19.7.2005 and it is passed by the Special Land Acquisition Officer, Mehsana i.e. Respondent no.2.

2. It is the say of the petitioners that they are owners of land bearing survey nos. 364, 363, 317, 355, and 353 of village Tejpura, Taluka and District Mehsana. The said land has been acquired for Narmada Canal Project at the instance of respondent no.1. It is further stated that respondent no.2 determined the compensation @ Rs.1.65 and Rs.1.10 per sq.meter for irrigated land. The petitioners did not prefer any Reference under section 18 of the Act before the District Court. However, some other similarly situated land owners preferred application under section 18 seeking reference to the District Court for enhancement of the award. Accordingly in reference the District Court increased the compensation @ Rs. 1.10 and Rs.1.65 to @ Rs.15.40 per sq. meter by way of award dated 15.12.2001. The petitioners, therefore, approached respondent no.2 by filing appropriate application under section 28A of the Act. However, the same came to be rejected by respondent no.2 by order dated 19.7.2005.

3. Mr Amit Nanavaty, learned Advocate appearing for the petitioners has submitted that the reason advanced by respondent no.2 for rejecting the application is against the proposition of law laid down by this court in several judgments. In support of his say, he has cited a decision rendered by the Division Bench of this court in the case of Chitubhai Naranbhai Patel v. Special Land Acquisition Officer, reported in 2005 (1) GLH 88. In the said decision, the Division Bench has observed as under:

> "Production of certified copy of the award along with application as provided under Order 41 R.1 of Civil Procedure Code (i.e. Copy of decree) is not made compulsory either in the Act or in the Rules made thereunder. Therefore, merely because certified copy of the order was not produced along with the application, such application cannot be rejected if the application is filed within three months from the date of the award. However, the petitioner who is producing certified copy is entitled to get the time for getting certified copy is excluded. There may be cases where parties may not be aware of the exact nature of the award of the court and they have to apply and get a certified copy. In order to provide for such situation proviso is included. The proviso of the Act gives no direction that application under Section 28A should always be

accompanied with the certified copy."

Thus, as per the decision of the Division Bench, production of the certified copy along with application under Section 28A of the Act is not required. Mr Nanavaty has also annexed to the petition judgments rendered by the Division Bench which are on the same line. In view of the same, it is obvious that the impugned order passed by respondent no.2 is against the proposition of law laid down by this court. Hence, this order has to be quashed and set aside. Accordingly, the impugned order is quashed and set aside. The matter is remanded to respondent no.2 for his consideration on merits. It would be open to respondent no.2 to examine all the issues involved in the application including the one of limitation. He shall render the decision within three months from the date of receipt of the writ of this petition.

Rule is made absolute to the aforesaid extent. Direct Service is permitted.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

msp